

CHAPTER 11
PAROLE REVOCATION

[Prior to 2/22/89, Parole, Board of[615] Ch 7]

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee and approved by the parole officer. Upon the execution of the voluntary termination of parole, the parolee's parole is terminated and the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale, as soon as reasonably possible. The parole officer shall determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center and shall make arrangements accordingly. The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole.

205—11.2(906) Prerevocation procedures. Reserved.

205—11.3(908) Revocation initiated. Parole revocation procedures shall be initiated only as provided by Iowa Code chapter 908, which this rule is intended to implement.

205—11.4(908) Revocation of parole. The board of parole or its parole revocation officer for good cause shown may revoke any parole previously granted. Good cause for revocation of parole shall include the violation of a condition or conditions of the parole agreement, or parole plan. Parole revocation procedures, including the parole revocation hearing, are governed by Iowa Code chapter 17A.

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in the following kinds of behavior:

- a.* Violation of any federal or state laws, except simple misdemeanors.
- b.* Any violent or assaultive conduct.
- c.* Possession, control or use of any firearms, imitation firearms, explosives or weapons as defined in federal or state statutes.
- d.* Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the parolee.
- e.* A parolee whose whereabouts are unknown and has been unavailable for contact for 30 days, or reliable information has been received indicating that the parolee is taking flight or absconding.
- f.* Any behavior indicating the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain the parolee in the community or which makes the parolee a danger to the parolee or others when the mental disorder cannot be adequately treated while in the community.
- g.* Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer.

11.5(2) The parole officer or supervisor is authorized to dispose of any other parolee misconduct not required to be reported above.

205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or media provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole agent relevant to the charges.

11.6(1) Supplemental parole violation report. A supplemental parole violation report may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; note court action on charges which are being prosecuted in a criminal proceeding or expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; and provide additional requested information to the board at any time or change the officer's recommendation. A supplemental report shall be filed upon the apprehension of a parolee on absconder status.

11.6(2) Recommendations. The parole officer shall recommend the appropriate disposition necessary to deal with the alleged violation. In a parole violation report the parole agent may make the following recommendations:

a. Continue on parole. This recommendation may be used when a violation charge is not serious enough to warrant reincarceration. A copy of the violation report containing a “continue on parole” recommendation shall be personally delivered and explained to the parolee, by the parole officer, and the parolee shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the parolee may request a parole revocation hearing. The chief revocation officer shall review the violation report and enter an order either affirming the recommendation to continue on parole or scheduling the matter for a parole revocation hearing before another parole revocation officer.

A parolee shall be allowed only two violation reports containing a “continue on parole” recommendation in a 12-month period; then a parole revocation hearing must be scheduled.

Generally, violations occurring over 12 months prior to the request for a parole revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.

b. Schedule for revocation proceedings. This recommendation may be used whenever the violation(s) alleged is so serious that reincarceration is necessary.

c. Delay action. This recommendation is used when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown, or the whereabouts of the parolee are unknown. The parole officer shall notify the board of the reason(s) for the recommendation to delay action.

11.6(3) District review.

a. Parole officer's responsibility. After discovery of information indicating a possible violation of parole, and determination by the parole officer that the violation(s) must be reported to the board, the parole officer shall prepare a parole violation report.

b. Parole supervisor review. After the preparation of a parole violation report the supervisor shall review the report, shall concur with the recommendation made, and shall submit the report to the business office of the parole board for review and scheduling of a parole revocation hearing, if required.

205—11.7(908) Parole revocation hearing. Following receipt of a parole officer's request for a parole revocation hearing, the board revocation officer or board designated officer shall set the date, time and place of the parole revocation hearing and cause a notice of parole revocation hearing to be completed.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee of the date, time, and place of the parole revocation hearing which shall:

a. Include a complete copy of the report of violations including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days' advance notice.

c. Inform the parolee of the purpose of the hearing; the violations of parole conditions alleged; the circumstances of the alleged violations; the possible action which may be taken as a result of the revocation proceedings; and the following rights to which the parolee shall be entitled at the parole revocation hearing. The right to:

(1) Appear and speak in their own behalf and to be aided by an interpreter if aid is determined to be necessary by the revocation officer.

(2) Representation by an attorney or if the parolee is indigent, the right to representation by an attorney pursuant to rule 26 of the Iowa Rules of Criminal Procedure.

(3) Remain silent.

(4) Present witnesses to testify in the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) Confront and cross-examine adverse witnesses unless the revocation officer determines that such witnesses would be subjected to risk of harm.

(6) Present documentary evidence and any relevant material or information.

11.7(2) *Testimony at parole revocation hearing.* All testimony shall be under oath.

11.7(3) *Parole revocation hearing recorded.* Parole revocation hearings shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the board of parole for at least five years from the date of the parole revocation hearing.

11.7(4) *Witnesses segregated.* The parole revocation officer on the officer's own motion or on the request of the parolee, parolee's counsel, or any representative of the state may order witnesses be segregated except that the parole officer, parolee, and counsel may be present at all times at the hearing.

11.7(5) *Parole revocation hearing evidence.* All evidence relevant to the charges or disposition is admissible at parole revocation proceedings.

a. Documentary evidence. The parole officer shall ensure all relevant documentary evidence is available at the hearing and has been made available to the parolee and the parolee's attorney prior to the hearing unless designated confidential. This evidence includes the violation report and statements of witnesses. When relevant documentary evidence is not available, the parole officer shall specify what evidence is unavailable and why.

b. Physical evidence. Physical evidence is ordinarily not required at the hearing. The parole officer may bring physical evidence to the hearing if the parolee has requested it or it appears necessary for the hearing, and security is not endangered and there is no other means of presenting the information.

11.7(6) *Witnesses.*

a. Parolee request. A parolee may request either friendly or adverse witnesses. If a witness is requested by the parolee or the parolee's attorney, the parolee or the parolee's attorney shall notify the parole officer.

b. Parole officer request. If, in preparing the case prior to the hearing, the parole officer requires a particular witness to demonstrate essential facts of violation, attendance of that witness may be requested by the officer even though the parolee has not requested that witness. If a witness is requested by the parole officer, the officer shall notify the parolee or the parolee's attorney.

c. Witnesses' transportation. All witnesses shall provide their own transportation.

d. Fearful witnesses. All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who even if their identities were known, fear for their safety, should they attend the hearing, shall be interviewed by the parole officer prior to the hearing, their information documented in writing or on tape, the reasons for their fear should also be documented, and the parole revocation officer shall determine whether good cause exists to excuse the witness's attendance and shall document the decision including the reasons.

e. Interviewing witnesses. A parolee or the parolee's attorney has the right to speak to possible witnesses, but it is completely within the discretion of an individual witness whether to speak to or disclose the witness's whereabouts to a parolee or the parolee's attorney. No attempt should be made by the parole board staff to influence the witness's decision.

11.7(7) *Subpoenas—general.* Subpoenas may be issued to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. Who may request. The parolee, the parolee's attorney, parole officer, and board staff may request a subpoena be issued.

b. To whom made. Requests shall be made directly to the revocation officer or the board designated officer as appropriate.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and

materiality of that evidence to the hearing, and that the requested witness has possession or control of the documentary evidence.

11.7(8) Continuances.

a. A hearing may be continued by the presiding officer for good cause shown, either upon the presiding officer's own motion or upon the request of a party. A party's request for continuance shall be made in writing prior to the hearing, to the board business office. Each party shall be granted only one continuance except, that in the case of extreme emergency, determined by the presiding officer, further continuance may be granted.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or request continuance within the allotted time, the presiding officer may continue the hearing and schedule another hearing with notice to all interested parties.

11.7(9) Areas of responsibility. The following areas of responsibility will apply for parole revocation hearing.

a. The parole officer will be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the parole revocation hearing in a courtroom unless good cause is established prior to the hearing;

(2) Preparing notice of hearing forms and causing the notices to be served;

(3) Notifying parolee's attorney of record of hearing date, time, and place;

(4) Notifying all necessary state witnesses of the hearing date, time, and place;

(5) Processing any required subpoenas on behalf of the state;

(6) Ensuring all relevant state documents, forms, and materials are available at the hearing;

(7) Attending the hearing;

(8) Arranging security for posthearing transfer of the parolee in the event incarceration is ordered.

b. The board revocation officer shall be responsible for the following:

(1) Maintaining records on all hearings in the field;

(2) Advising the business office regarding progress of each case;

(3) Forwarding to the business office all materials and forms when hearings are completed.

11.7(10) Parole revocation hearing—adjudication.

a. At the conclusion of the adjudication stage of the hearing, the revocation officer shall determine whether the parolee has violated the conditions of parole and shall verbally advise the parolee of the decision.

b. If the revocation officer determines probable cause does not exist to believe the parolee has violated conditions of parole, the revocation officer shall order that the parolee be released from custody and continued on parole.

c. If the revocation officer finds that the parolee has violated a condition or conditions of the parole agreement, the revocation officer shall make one of the following dispositions at the parole revocation hearing:

(1) Revocation of the parole

(2) Reinstatement of the parole

(3) Reinstatement of the parolee to work release

(4) Continue the dispositional hearing.

d. The revocation officer shall determine from the record established at the final revocation hearing the date(s) of violation.

11.7(11) Parole revocation—hearing summary. The revocation officer or the board's designated officer shall forward a summary of parole revocation hearing to the parolee, parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation hearing shall consist of a summary of the proceeding and shall contain the revocation officer's findings of fact, conclusions of law and disposition of the matter.

205—11.8(908) Appeal or review. The order of the parole revocation officer shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or re-

view of the parole revocation officer's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the parole revocation officer. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.

205—11.9(908) Interstate compact probable cause hearings. The Iowa board of parole may conduct interstate compact parole probable cause hearings under the same procedures as the Iowa parole revocation hearings.

205—11.10(908) Parolee convicted of new offenses. A parolee who is found guilty of a new offense or who pleads guilty to a new offense, including simple misdemeanors, has no right to the adjudication stage of the parole revocation hearing.

205—11.11(908) Waivers. When the parole officer makes a recommendation to the board of parole for revocation of parole, the parole officer shall inform the parolee of the parolee's rights and afford the parolee the opportunity to execute a waiver of parole revocation hearing.

The parole officer should also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing being conducted over the telephone.

11.11(1) Waiver of parole revocation hearing. A waiver of parole revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the parole revocation officer to contest the violations.

11.11(2) Parole revocation hearing waiver procedures. If the parolee desires to execute a waiver of parole revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the parolee in the presence of the board revocation officer or the parole officer/supervisor if conducted electronically. The revocation officer shall make a verbatim record of the waiver proceeding and shall address the parolee personally and inform the parolee of and determine that the parolee understands the contents of the waiver form which shall include:

- a. The nature of the parole violation to which the waiver is addressed;
- b. The legal rights of the parolee;
- c. The fact that the execution of the waiver constitutes an admission of the alleged violation(s);
- d. The fact that the parolee may be committed to the custody of the Iowa department of corrections without further proceedings.

(1) A waiver is complete and final upon execution.

(2) A waiver may be appealed according to the parole board's parole revocation appeal process in rule 205—11.8(908).

11.11(3) Waiver of the right to personal appearance. In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing should be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted electronically.

These rules are intended to implement Iowa Code chapters 906 and 908.

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